

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte: JARMO MAKELA, JENS JAKOBESSEN  
and ANTTI JAUHLAINEN

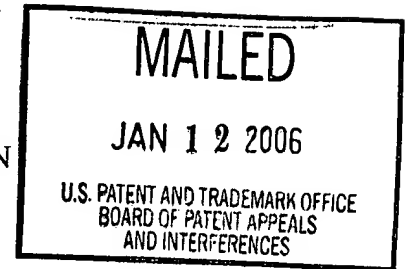
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Application No. 09/827,489

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ORDER RETURNING UNDOCKETED APPEAL

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This application was received at the Board of Patent Appeals and Interferences on September 26, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

ACKNOWLEDGMENT OF REPLY BRIEF

On September 22, 2005, the examiner mailed a communication acknowledging receipt of Appellant's Reply Brief, dated January 19, 2005. A review of the Response to Reply Brief reveals that the examiner did not provide proper acknowledgment. The comments made by the examiner would constitute being a Supplemental Examiner's Answer.

In accordance with MPEP 1207.05:

Every supplemental examiner's answer must be approved by a Technology Center (TC) Director or designee. The examiner may furnish a supplemental examiner's answer in response to any one of the following:

1. (A) *A reply brief that raises new issues.* The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a reply brief. See 37 CFR 41.43(a)(2). Appellant may file another reply brief in response to the supplemental examiner's answer within two months from the mailing of the supplemental answer. See MPEP § 1208.
2. (B) *A remand by the Board for further consideration of a rejection under 37 CFR 41.50(a).* See MPEP § 1211.01. In response to a supplemental examiner's answer that is written in response to a remand by the Board for further consideration of a rejection, appellant must either file: (1) a reply under 37 CFR 1.111 to request that prosecution be reopened; or (2) a reply brief to request that the appeal be maintained, within two months from the mailing of the supplemental examiner's answer, to avoid *sua sponte* dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding. Examiner may include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board for further consideration of a rejection. See MPEP § 1207.03.
3. (C) *A remand by the Board for other purposes that are not for further consideration of a rejection under 37 CFR 41.50(a).* The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board, unless the remand is for further consideration of a rejection under 37 CFR 41.50(a) (see item B above). Appellant may file a reply brief with two months from the mailing of the supplemental answer.


A review of the Response to Reply Brief reveals that the examiner did not provide proper approval.

Accordingly, it is

Ordered that the application is returned to the Examiner to

- 1) vacate the Examiner's Acknowledgment to the Reply Brief mailed September 22, 2005;
- 2) proper acknowledgment of the Reply Brief is required and/or appropriate consideration of the Reply Brief dated July 5, 2005;
- 3) acquiring approval for any Supplemental Examiner's Answer in response to the Reply Brief mailed July 5, 2004, if appropriate; and
- 4) for such further action as may be deemed appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES



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